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OFFICE OF PETITIONS

In re Application of :
Gerald Morrow : DECISION ON PETITION
Application No. 10/804,948 :
Filed: March 19, 2004 :
Attorney Docket No. 2101 :

This is a decision on the "REQUEST TO WITHDRAW THE HOLDING OF ABANDONMENT" filed December 9, 2005.

The above-identified application became abandoned for failure to reply to the restriction requirement mailed April 5, 2005. This Office action set a one-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply considered received and no extension obtained, the above-identified application became abandoned on May 6, 2005. A Notice of Abandonment was mailed on November 30, 2005.

In response, applicant timely filed the instant petition. Petitioner states that a response to the restriction requirement with a certificate of mailing dated May 5, 2005, was received in the Office on May 9, 2005. In support thereof, petitioner submitted a copy of their response and the front and back of their return postcard.

37 CFR 1.8(b) provides that:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding

is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

On instant petition, petitioner has satisfied the requirements of 1.8(b) to have the response considered timely filed by virtue of the certificate of mailing dated May 5, 2005. In addition, petitioner's postcard evidence serves as *prima facie* evidence that the response was, in fact, received May 9, 2005.

Accordingly, the Notice of Abandonment mailed November 30, 2005 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 3643 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and for the examiner to consider the response to restriction requirement resubmitted on petition filed December 9, 2005.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, reading "Nancy Johnson". The signature is fluid and cursive, with a large loop at the end of the last name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions